

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF ILLINOIS**

<b>IN RE:</b>	)	
	)	
<b>FRANK J. CAHALAN,</b>	)	<b>No. 98-80932</b>
<b>Debtor.</b>	)	
	)	
<b>STEPHANIE SWARTZ and</b>	)	
<b>DWIGHT SWARTZ,</b>	)	
<b>Plaintiffs,</b>	)	
	)	
<b>vs.</b>	)	<b>Adv. No. 98-8171</b>
	)	
<b>FRANK J. CAHALAN,</b>	)	
<b>Defendant.</b>	)	

**OPINION**

Prior to Frank J. Cahalan (DEBTOR), filing a Chapter 7 case in Bankruptcy, he owned and operated a construction company, Jim Cahalan Corporation. In December of 1995, Dwight Swartz and Stephanie Swartz (PLAINTIFFS), entered into a written contract with Jim Cahalan Corporation for the erection of a single family residence. The work was not completed and the DEBTOR filed for bankruptcy.

The PLAINTIFFS, who at this point were represented by an attorney, filed a two-count adversary complaint against the DEBTOR. Count I is brought under § 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/2(12), and the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505, based on an alleged fraudulent mechanics lien affidavit. Count II is brought as a common law fraud count and in the alternative § 523(a)(6) of the Bankruptcy Code, 11 U.S.C. § 523(a)(6), alleging PLAINTIFFS paid money based on a fraudulent mechanics lien affidavit and paid other sums to the DEBTOR for materials and labor that the DEBTOR falsely represented were used in the construction of their residence. The DEBTOR counterclaimed on

behalf of Jim Cahalan Corporation for the amount allegedly still due it under the contract.

As the time for the trial approached, the PLAINTIFFS' attorney filed a motion asking to withdraw, indicating the PLAINTIFFS wished to proceed *pro se*. At the hearing on the motion, this Court recommended the PLAINTIFFS obtain the services of an attorney and advised them of the difficulties they might encounter if they proceeded *pro se*. An order was entered allowing the attorney to withdraw, giving the PLAINTIFFS time to obtain an attorney, and setting the matter for trial. The PLAINTIFFS did not obtain another attorney and the trial was held with them acting *pro se*.

From the pleadings, pre-trial conference, a hearing on the PLAINTIFFS' motion for summary judgment, and what little could be gleaned from the trial, it appears that the contract was not fulfilled and that the PLAINTIFFS had to pay more money than called for by the contract to complete it, possibly paying twice for some items.

In order to prevail in this Court, the PLAINTIFFS had to prove more than a breach of contract, i.e., that they did not get what the contract called for. A debt arising out of a mere breach of contract, while recoverable in state court, is dischargeable in Bankruptcy, unless it falls within one of the stated exceptions found in § 523 of the Bankruptcy Code, 11 U.S.C. § 523. Section 523(a)(2)(A) requires proof of a false pretense, a false representation, or actual fraud.<sup>1</sup> Section 523(a)(6) requires a willful and malicious injury to the PLAINTIFFS which means to except a debt from discharge under §523(a)(6) on the grounds of willful and malicious injury, a creditor must prove (1) a willful and malicious act; (2) done without cause; and (3) which leads to harm. *In re Hallahan*, 78 B.R. 547 (Bkrtcy.C.D.Ill. 1987). "Willful" means that the debtor must have intended the specific injury to the creditor and for an injury to be "malicious" it must

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<sup>1</sup>The Illinois statutes relied on by the PLAINTIFFS also require proof of fraud or a deceptive practice.

be wrongful and without just cause or excuse.

Unfortunately, the PLAINTIFFS, acting *pro se*, had no concept of how to proceed and what they had to prove. They presented no proof upon which this Court could rely to find fraud or deceptive actions. They presented very little in the way of evidence, as they had great difficulty getting anything into evidence. Only Dwight Swartz testified. The only documents that were introduced at trial were the purported false lien waiver and an authorization by the PLAINTIFFS for payment to the DEBTOR for a portion of the work. When the PLAINTIFFS attempted to introduce statements from one of the DEBTOR's suppliers, the DEBTOR objected and the objection was sustained. Ultimately, a *pro se* creditor must be held to the same standards of proof as those who are represented by counsel. Therefore, this Court has no choice but to find that the PLAINTIFFS failed to meet their burden of proof and hold that the debt is discharged.

As to the counterclaim, it is also denied as the DEBTOR is not the proper party to assert a claim on behalf of the Jim Cahalan Corporation and this Court has no jurisdiction to decide a claim between two parties, neither of which is in Bankruptcy. Even if it did have jurisdiction, there was no proof to establish the allegations of the counterclaim.

This Opinion is to serve as Findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

See written Order.

DATED: March 21, 2000.

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WILLIAM V. ALTENBERGER  
UNITED STATES BANKRUPTCY JUDGE

COPIES TO:  
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Plaintiffs

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Trustee

U.S. TRUSTEE  
401 Main Street, Suite 1100  
Peoria, Illinois 61602

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<b>FRANK J. CAHALAN,</b>	)	
<b>Defendant.</b>	)	

**ORDER**

For the reasons stated in an OPINION filed this day, IT IS HEREBY ORDERED that as to the complaint filed by the PLAINTIFFS, judgment is entered in FAVOR of the DEBTOR, FRANK CAHALAN, and AGAINST the PLAINTIFFS, DWIGHT and STEPHANIE SWARTZ and the debt is declared to be DISCHARGEABLE, and the counterclaim filed by Jim Cahalan against the PLAINTIFFS is DISMISSED.

Dated: March 21, 2000.

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WILLIAM V. ALTENBERGER  
UNITED STATES BANKRUPTCY JUDGE

Copies to:  
Dwight Swartz and Stephanie Swartz  
Mr. Steven W. Hanna  
Mr. Richard Barber  
U.S. Trustee